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909 7590 02/24/2009 PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* LUNDY LEWIS

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Appeal 2008-4230  
Application 09/578,156  
Technology Center 2100

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Decided:<sup>1</sup> February 24, 2009

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Before ALLEN R. MACDONALD, ST. JOHN COURTENAY III, and  
STEPHEN C. SIU, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF CASE

### *Introduction*

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1-6, 9-13, 15-18, 20, 21, and 23-26. Appellant indicates that claims 7, 8, 14, 19, and 22, have been cancelled (App. Br., Claim Appendix).<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing for this appeal was conducted on February 12, 2009.

According to Appellant, the invention is related to various aspects of service level management (SLM), whereby a state of the service is defined by one or more service parameters, and the service parameters depend upon performance of network components that support the service, e.g., component parameters. (Abstract).

### *Exemplary Claim(s)*

Exemplary independent claim 1 under appeal reads as follows:

1. A computer-implemented system for providing service level management in a network, wherein the network includes a plurality of network components, and wherein a service operates on a subset of the plurality of network components, the service having a state, the system comprising:

multiple monitoring agents that each monitor a respective aspect of operation of one or more of the network components, wherein each monitoring agent detects events in the respective monitored aspect of operation and generates alarms as a function of the detected events; and

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<sup>2</sup> We note that the Final Rejection, the Examiner's Answer, the Appeal Brief, and the Reply Brief, each list one or more of these claims as being rejected or appealed. However, these claims are indicated as cancelled and are not part of this appeal.

an alarm correlation agent that receives the generated alarms from the monitoring agents, wherein the alarm correlation agent determines a current state of the service based on the received alarms and issues one or more instructions to autonomously establish a desirable state of the service when the current state of the service is undesirable.

*Prior Art*

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Feridun                      US 6,336,139 B1    Jan. 1, 2002

The Board makes note of additional prior art as follows:

Turek                      US 6,460,070        Oct. 1, 2002

Feridun incorporates Turek by reference at column 11, lines 4-10.

*Rejections*

The Examiner rejected claim 1 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent 6,430,712.

The Examiner rejected claims 1, 6, 11, 13, 18, 20, 21, 23, and 26 under 35 U.S.C. § 112, second paragraph, as being indefinite.

The Examiner rejected claims 1-6, 9-13, 15-18, 20, 21, and 23-26, under 35 U.S.C. § 102(e) as being anticipated by Feridun.

*Appellant's Contentions*

(1) Appellant does not appeal the rejection of claim 1 on the ground of non-statutory obviousness-type double patenting. Thus, the Appellant does not contend that the Examiner erred as to this rejection. Therefore, we affirm this rejection.

(2) Appellant contends that the Examiner erred in rejecting claims 1, 6, 11, 13, 18, 20, 21, and 23 under 35 U.S.C. § 112, second paragraph, as being indefinite. (App. Br. 6-8). We agree for the reasons set forth by the Appellant. Therefore, we reverse this rejection.

(3) Appellant contends that the Examiner erred in rejecting claims 1-6, 9-13, 15-18, 20, 21, and 23-26, under 35 U.S.C. § 102(e) as being anticipated by Feridun. More specifically, the Appellant contends that the Examiner erred because:

(A) Feridun does not disclose at least the feature of:

an alarm correlation agent that receives the generated alarms from the monitoring agents, wherein the alarm correlation agent determines a current state of the service based on the received alarms and issues one or more instructions to autonomously establish a desirable state of the service when the current state of the service is undesirable.

(App. Br. 8).

### *Result*

We affirm.

### ISSUE(S)

#### *Issues on Appeal*

(1)

Whether Appellant has shown that the Examiner has erred because the disclosure of Feridun (an the incorporated disclosure of Turek) does not teach limitations required by claims 1-6, 9-13, 15-18, 20, 21, and 23-26?

## FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

### *Appellant's Invention*

1. According to Appellant in one embodiment, a system is provided for determining a state of the service, *the service being composed of network components*, and the service affecting operation of a business process. (Spec. 14:8-10).
2. *The system comprises agents for monitoring and determining the state of one or more of the network components.* (Spec. 14:10-11).
3. *A network includes four general categories of components:* transmission devices, transmission media (also referred to as lines or links) among the devices, computer systems, and applications (residing on the computer systems and transmission devices). (Spec. 20:1-3).
4. *A component is used broadly herein to include hardware, software, firmware, applications, processes, etc.* (Spec. 20:3-5).
5. Computer systems include servers, desktops, workstations, etc. (Spec. 20:5).
6. Transmission media is used broadly to include copper, wireless, optical, satellite, etc. (Spec. 20:5-6).
7. A network is also used broadly to include a business network (sometimes called an enterprise, typically owned by the business), a service provider network (not typically owned by the SP, e.g., an intermediary between the Internet and customer), telephony networks, etc. (Spec. 20:6-9).

8. The information conveyed on the network is meant to broadly include data, voice, video, etc. (Spec. 20:9-10).
9. A service is a function that a network provides for the business. (Spec. 20:11).
10. A service is an abstraction over and above the network, and arises in virtue of the structure and operation of the network. (Spec. 20:11-13).
11. A service may be a function whose performance depends upon performances of network components that support the service. One example of a service is providing Internet access. (Spec. 20:13-15).
12. Service level management (SLM) is the identification and monitoring of service level parameters. (Spec. 23:5-6)
13. In one embodiment, SLM refers to a process which includes “deploying agents to monitor and control component parameters.” (Spec. 23:6 and 8-9).

*Feridun*

14. Feridun discloses a method of event correlation implemented within a distributed environment having a management server and a set of managed machines. The preferred event correlation method begins by establishing a discrete set of correlation rules. Each correlation rule is adapted to recognize a given pattern of one or more events indicative of a given condition. (Abstract).
15. An object of Feridun is to deploy a Java-based software agent into a large distributed computing environment, which agent is then dropped

into a local runtime environment to correlate a set of event streams. (Col. 1, ll. 64-67).

16. A more general object of this invention is to correlate events that convey status changes in monitored objects within a distributed computing environment. (Col. 2, ll. 1-3).

17. Feridun incorporates Turek by reference. (Col. 11, ll. 4-10).

*Turek*

18. Turek is directed to managing a large distributed computer enterprise environment and, more particularly, to diagnosing and correcting network faults in such an environment using mobile software agents. (Col. 1, ll. 7-10).

19. Turek discloses “a method of diagnosing a given event (e.g., a fault, an alarm, or the like) in a large, distributed computer network in which a management infrastructure is supported.” (Col. 2, ll. 27-30).

20. In a preferred embodiment, the present invention envisions automatic deployment of one or more software agents to locate a particular network fault, and the use of such agent (once the fault is located) to rectify the problem. (Col. 6, ll. 27-31).

21. Turek states that “a given event is a network ‘fault’, alarm or other such trigger” and “[o]ne of ordinary skill will appreciate that the particular event need not be a fault or alarm type of condition, however.” (Col. 7, ll. 3-6).

22. An alternative event might be a request for maintenance in some non-specific area of the network. (Col. 7, ll. 6-7).

23. Once the fault or other problem has been diagnosed, the agent attempts to fix the problem. The agent may have the necessary code or it may send requests to the dispatch mechanism for additional code to effect the repair. The dispatch mechanism may be located in distributed locations as well, if desired. The additional code may be other software agent(s). If unable to effect repairs, the agent will, at a minimum, report back with the diagnosis to a user interface of the dispatch mechanism. (Col. 9, ll. 21-30).

#### PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

For a rejection under § 102, Appellant may sustain this burden by showing that the prior art reference relied upon by the Examiner fails to disclose an element of the claim. It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984).

### ANALYSIS

Appellant essentially argues two points. First, the events of Feridun are not equivalent to the alarms of Appellant's claims. (Reply Br. 6). Second, Feridun does not disclose that analysis of the correlated events includes the "current state of the service" as claimed. (Reply Br. 7).

We disagree. Firstly, Turek (which is incorporated by Feridun) explicitly states that events include faults, alarms, and requests for maintenance. (FF 21, 22).

Secondly, although Appellant has in one instance described a "service" as an abstraction over and above the network (FF 10), Appellant also describes a "service" as being composed of network components. (FF 1). Appellant goes on to describe the components as including hardware on the network. (FF 2-3). Further, Appellant repeatedly states that the agents monitor the service by monitoring the state of network components. (FF 2 and 13). Given Appellant's broad description of "service" we conclude that Feridun/Turek's disclosure of event/alarm diagnosis/correction for networked computer system components does teach establishing a desirable current "state of the service" as claimed.

Therefore, for the reasons above, Appellant has not established that the Examiner erred with respect to this rejection of claims 1-6, 9-13, 15-18, 20, 21, and 23-26 under § 102(e).

### CONCLUSION OF LAW

(1) Appellant has failed to establish that the Examiner erred in rejecting claims claim 1 on the ground of non-statutory obviousness-type double patenting.

(2) Appellant has established that the Examiner erred in rejecting claims 1, 6, 11, 13, 18, 20, 21, 23, and 26 under 35 U.S.C. § 112, second paragraph, as being indefinite.

(3) Appellant has failed to establish that the Examiner erred in rejecting claims 1-6, 9-13, 15-18, 20, 21, and 23-26, as being unpatentable under 35 U.S.C. § 102(e) over Feridun.

(4) Claims 1-6, 9-13, 15-18, 20, 21, and 23-26 are not patentable.

### DECISION

The Examiner's rejection of claims 1, 6, 11, 13, 18, 20, 21, and 23 under § 112 is reversed.

The Examiner's rejection of claim 1 on the ground of non-statutory obviousness-type double patenting is affirmed.

The Examiner's rejection of claims 1-6, 9-13, 15-18, 20, 21, and 23-26, under 35 U.S.C. § 102(e) is affirmed.

At least one rejection of each pending claim is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

pgc

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